

REMARKS

As for the status of the application, Claims 1 and 5 have been amended, and Claims 1-14 are pending in this application. Reconsideration of this application is respectfully requested.

Claim 1 has been amended to more clearly recite the construction of the tubing cuff. Original Claim 5 did not have a period at the end and has been corrected.

Claims 1, 2, 7, 8, 11, 12 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent Publication No. 2002/0165495 of Bird et al.

The Bird et al. document discloses "An improved anchoring appliance for detachably securing a catheter or other elongate or tube-like member to the limb of a body is disclosed. A primary strap with a slip-resistant surface is configured for adjustable encircling attachment to the limb. The slip-resistant surface directly engages the limb and includes material that resists slippage of the strap longitudinally along the limb. A secondary anchoring member attached to the strap is configured to detachably retainably engage and hold a catheter or other elongate or tube-like member in a desired position relative to the strap. The anchoring appliance preferably has at least its slip-resistant surface made of non-allergenic materials."

The Examiner's position is that Bird teaches a tubing cuff for securing a tube with a layer of porous material 13, a layer of foam rubber 16 secured to one side of the layer of porous material; a reclosable fastener 15 for securing distal needs of the cuff and a bendable adhesive layer 24 having an adhesive attached to the porous material. Notwithstanding the Examiner's position, it is respectfully submitted that the Examiner's rejection is in error.

The Bird et al. document states in paragraph 39 that "The tube-retaining band ... has a primary strap portion 11 ... to which a tube device 3 is to be secured", and that "The primary strap 11 is preferably constructed of an elastic woven, knit, or webbing material", and that "an outer surface 12 of the band, illustrated as the upper-most surface in FIG. 2 is configured as a looped material, typically or brushed nylon or knit or woven loop material having loops extending outwardly from the surface". It is stated in Claim 18 that "said primary strap material is porous to air passage through said slip-resistant first surface".

With regard to reference numeral 13, the Bird et al. document states in paragraph 39 that "The opposite or inner surface 13 of the primary strap 11 is configured to directly engage the skin of the limb or other member encircled by the primary strap 11. The inner surface 13 of the primary strap 11 is constructed of or may, or may not carry a soft lining material which may, for example, be in the form of a Helanca™ backing or other soft material which is comfortable and non-allergenic to the wearer's skin ..."

The Bird et al. document states in paragraph 43 that "A slip-resistant material [identified by reference numeral 16] such as silicone may be applied to the inner surface 13 of the primary strap 11 to prevent or retard slippage between the inner surface 13 of the primary strap 11 and the outer limb surface to which the primary strap is affixed.", and that "In a preferred embodiment of the invention, the slip-resistant material 16 is in the nature of silicone material;

however, it will be understood by those skilled in the art that other materials such as for example, neoprene or latex rubber, could equally well be used."

With regard to layer 24, the Bird et al. document states in paragraph 47 that "A length of an elastic or nonelastic "hook" fastening material 24 is secured by stitching 25 to the outer surface 20b of the secondary strap 20 at its distal end 20c. The hook fastening material 24 is oriented relative to the secondary strap 20 such that its hook-like barbs face in the same direction as the inner surface 20a of the secondary strap 20."

However, as for the slip-resistant material used in the Bird et al. device, while it is stated that neoprene or latex rubber may be used, it is respectfully submitted that there is no specific disclosure or suggestion in the Bird et al. document that the slip-resistant material comprises "a layer of porous foam rubber". The term "foam" is not used in the Bird et al. document.

Furthermore, as for the fastener used in the Bird et al. device, it is stated in paragraph 41 that "A short strip 15 of "hook"-type fastener material ... is secured by stitching 14 to the inner surface 13 of the primary strap 11 adjacent its second end 11b, and longitudinally extends outwardly therefrom to a distal end 15a." It is stated in paragraph 41 of the Bird et al. document that "an outer surface 12 of the band, ... is configured as a looped material." Thus, the entire outer surface of the primary strap is made of loop material. It is stated in paragraph 41 that "the fastener material 15 ... overlaps and engages the loops of the outer surface 12 of the primary strap as the strap encircles the limb."

It is stated in paragraph 45 that the "secondary strap portion 20 is preferably configured of an elastic webbing material", that "The inner surface 20a of the secondary strap 20 is entirely or partially lined with a layer of slip-resistant material such as silicone, neoprene or latex", that In the preferred embodiment, the slip-resistant material is of ribbed configuration as illustrated in FIG. 4, wherein the ribs extend longitudinally of the secondary strap 20.", and that "In the preferred embodiment, the secondary strap portion material of the preferred embodiment is generally referred to as a woven or knit elastic that is commercially available." It is stated in paragraph 47 that "A length of an elastic or nonelastic "hook" fastening material 24 is secured by stitching 25 to the outer surface 20b of the secondary strap 20."

Thus, it is clear from a reading of the Bird et al. document that the secondary strap portion 20 which is used to secure a tube is not made of bendable adhesive material. There is absolutely no disclosure or suggestion in the Bird et al. document regarding the use of a bendable adhesive layer to secure the tube. In fact,, the term "adhesive" is not used in the Bird et al. document.

Amended Claim 1 calls for a tubing cuff for securing a tube to a limb of a patient, comprising:

- a layer of porous, cloth-like material;
- a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material;

a reclosable fastener for securing distal ends of the cuff together; and
a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber.

In view of the above discussion, and with regard to Claim 1, it is respectfully submitted that the Bird et al. document does not disclose or suggest "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", or "a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber", as is recited in Claim 1. *

Therefore, it is respectfully submitted that the invention recited in Claim 1 is not disclosed or suggested by the Bird et al. patent. It is therefore respectfully submitted that the invention recited in Claim 1 is not anticipated by, nor is it obvious in view of the Bird et al. document. Withdrawal of the Examiner's rejection of Claim 1 is respectfully requested.

With regards to Claim 2, while Claim 18 of the Bird et al. document states that "said primary strap material is porous to air passage through said slip-resistant first surface", this is the only use of the term "porous" in the Bird et al. patent, and there is no specific disclosure relating thereto in the specification of the Bird et al. patent. Furthermore, it is respectfully submitted that the Bird et al. patent does not disclose or suggest the use of a microporous film layer as the primary strap layer. The terms "microporous" or "microporous film" are not used in the Bird et al. document. Therefore, it is respectfully submitted that the Bird et al. patent does not disclose or suggest that "the layer of porous, cloth-like material comprises microporous film", as is recited in Claim 2. *

With regards to Claim 7, while Claim 18 of the Bird et al. patent states that a "slip-resistant material such as silicone may be applied to the inner surface 13 of the primary strap 11", and that the slip-resistant material may be "neoprene or latex rubber," it is respectfully submitted that the Bird et al. document does not disclose or suggest anything regarding the use of a "layer of non-skid porous foam rubber", as is recited in Claim 7. *

With regards to Claim 14, it is respectfully submitted that the Bird et al. patent does not disclose or suggest the use of a layer of porous foam rubber comprising adhesive for the purpose of securing the tube. The Bird et al. device uses a hook and loop fastener. Also, there is no bendable adhesive layer that is wrapped around a tube to secure it to the cuff. *

Therefore, it is respectfully submitted that the Bird et al. document does not disclose or suggest a tubing cuff "wherein the layer of porous foam rubber is placed against the patient's limb and secured by the reclosable fastener, and wherein a tube is laid on exposed adhesive of the bendable adhesive layer, which bendable adhesive layer is wrapped around the tube to secure it to the cuff", as is recited in Claim 14. *

Dependent Claims 2, 7, 8, 11, 12 and 14 are also considered patentable based upon their dependence from allowable Claim 5. Therefore, it is respectfully submitted that the inventions recited in Claims 2, 7, 8, 11, 12 and 14 are not disclosed or suggested by the Bird et al.

Doesn't have to be!

something! hook+fastener is a type of Adhes

document, and that the inventions in Claims 2, 7, 8, 11, 12 and 14 are not anticipated by, nor they obvious in view of the Bird et al. document. Therefore, withdrawal of the Examiner's rejection of Claims 2, 7, 8, 11, 12 and 14 is respectfully requested.

Claims 4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2002/0165495 of Bird et al. in view of US Patent No. 5,342,317 issued to Claywell. The Examiner essentially stated that the Bird et al. document teaches the present invention, but admitted that the Bird et al. document does not disclose that the porous layer is hypoallergenic. The Claywell patent is cited as teaching a tubing cuff with a hypoallergenic layer, which the Examiner concluded could have been used in the Bird et al. device.

It is respectfully submitted that the Bird et al. and Claywell references, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Bird et al. and Claywell references, taken singly or together, do not disclose or suggest the inventions recited in Claims 4 and 6.

Furthermore, dependent Claims 4 and 6 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 4 and 6 are not obvious in view of the Bird et al. document or Claywell patent, taken singly or together. Withdrawal of the Examiner's rejection of Claims 4 and 6 is respectfully requested.

Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2002/0165495 of Bird et al. in view of US Patent No. 5,879,335 to Martinez et al. The Examiner admitted that "Bird teaches the invention except for no woven loop with a durable backing layer. The Martinez patent is cited as teaching a woven loop with a durable backing layer, which the Examiner concluded could have been used in the Bird et al. device.

It is respectfully submitted that the Bird et al. and Martinez et al. references, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Bird et al. and Martinez et al. references, taken singly or together, do not disclose or suggest the inventions recited in Claims 9 and 10.

In addition, dependent Claims 9 and 10 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that Claims 9 and 10 are not obvious in view of the Bird et al. document or Martinez patent, taken singly or together. Withdrawal of the Examiner's rejection of Claims 9 and 10 is respectfully requested.

Claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2002/0165495 of Bird et al. in view of No. US Patent No. 5,529,062 issued to Byrd. The Examiner admitted that "Bird teaches the invention except for the layer of porous material comprising polypropylene material. The Examiner stated that "Byrd teaches a layer of porous polypropylene material, which the Examiner concluded could have been used in the Bird et al. device.

It is respectfully submitted that the Bird et al. reference and Byrd patent, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Bird et al. reference and Byrd patent, taken singly or together, do not disclose or suggest the inventions recited in Claims 3 and 5.

Furthermore, it is respectfully submitted that the Bird et al. document does not disclose or suggest the use of microporous film. The terms "microporous" or "microporous film" are not used in the Bird et al. document. As is stated in the Bird et al. document, the primary strap is made of an "elastic woven, knit, or webbing material".

It is stated in the Byrd patent at column 3, in the third full paragraph of the "Best Mode" section of the specification, that the "straps 24 are fabricated of a soft pliable material, such as a spun-bond polypropylene, having a surface 25 covered with a cellophane or plastic coating". The use of such a material having spun-bond polypropylene covered with a cellophane or plastic is not compatible with the teachings of the Bird et al. document

Therefore, it is respectfully submitted that combining the teachings of the Bird et al. document and the Byrd patent improperly extends the teachings of the Bird et al. document beyond its scope, which amounts to hindsight reconstruction.

Accordingly, with regard to Claim 3, it is respectfully submitted that the teachings of the Bird et al. document and the Byrd patent, taken singly or together, do not disclose or suggest that "the microporous film comprises polypropylene material", as is recited therein, and not without the use of hindsight reconstruction.

It is respectfully submitted that there is no teaching contained in the Bird et al. document regarding the use of laminated strap material. It is also respectfully submitted that there is no teaching contained in the Byrd patent regarding the use of laminated strap material including microporous film and polypropylene nonwoven material. The terms "microporous", "film" or "microporous film" are not used in the Byrd patent. It is respectfully submitted that any suggestion by the Examiner that the cited documents disclose such a strap construction amounts to hindsight reconstruction.

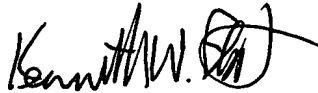
Therefore, with regard to Claim 5, it is respectfully submitted that the teachings of the Bird et al. document and the Byrd patent, taken singly or together, do not disclose or suggest that "the microporous film comprises a laminate of microporous film and a polypropylene nonwoven material", as is recited therein, and not without the use of hindsight reconstruction.

Dependent Claims 3 and 5 are also considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that Claims 3 and 5 are not obvious in view of the Bird et al. document or Byrd patent, taken singly or together, and certainly not without using hindsight reconstruction. Accordingly, withdrawal of the Examiner's rejection of Claims 3 and 5 is respectfully requested.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure to the extent indicated by the Examiner.

In view of the above, it is respectfully submitted that all pending Claims are not anticipated by, nor are they obvious in view of the cited references, taken singly or together, and are therefore patentable. Accordingly, it is respectfully submitted that the present application is in condition for allowance. Reconsideration and allowance of this application are earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth W. Float", with a stylized flourish at the end.

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